



POLICE DEPARTMENT CITY OF NEW YORK

October 18, 2017

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Michelle Irons
Tax Registry No. 933865
107 Precinct
Disciplinary Case No. 2016-16285

Charges and Specifications:

1. Said Sergeant Michelle Irons, while assigned to the 107th Precinct, on or about August 16, 2016, while acting as the Desk Officer, wrongfully failed to remain alert and remain on post until relieved, as required.
P.G. 203-05, Page 1, Paragraphs 1 & 2 – PERFORMANCE ON DUTY –
GENERAL – GENERAL REGULATIONS
2. Said Sergeant Michelle Irons, while assigned to the 107th Precinct, on or about August 16, 2016, while acting as the Desk Officer, failed to comply with her responsibilities as the Desk Officer, including failing to make an entry in the Command Log as to when she had temporarily assumed the role of Desk Officer, failing to sign out in the Command Log when she had left the Desk area, failing to oversee all police operations at her Command, or interviewing witnesses who had entered her Command.
P.G. 202-14, Page 1, Paragraph 1, 3 & 5
Page 2, Paragraph 14 – DESK OFFICER – DUTIES AND
RESPONSIBILITIES
3. Said Sergeant Michelle Irons, while assigned to the 107th Precinct, on or about September 16, 2016, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Sergeant made inaccurate, incomplete, or otherwise misleading statements during an official Department interview regarding her actions on August 16, 2016.
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT
– PROHIBITED CONDUCT
– GENERAL REGULATIONS

Appearances:

For the Department: Samuel Yee, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For Respondent: Chukwuemeka Nwokoro, Esq.
Nwokoro & Scola, Esquires
44 Wall Street, Suite 1218
New York, NY 10005

Hearing Dates:

April 19 and August 10, 2017

Decision:

Specification Nos. 1 and 3: Guilty
Specification No. 2: Guilty in Part

Trial Commissioner:

ADCT David S. Weisel

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on April 19 and August 10, 2017. Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. The Department called Deputy Inspector Peter Bartoszek, Sergeant Matthew Wickert, Police Officer Thomas Johnson and Lieutenant Michael Hoehl. Respondent called Police Officer Thierry Pochat as a witness and testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, the Court finds Respondent Guilty of Specification Nos. 1 and 3, and Guilty in Part of Specification No. 2.

FINDINGS AND ANALYSIS

It is undisputed that on August 16, 2016, Respondent and Sergeant Matthew Wickert were the only two supervisors assigned to the 107 Precinct during the first platoon. Respondent was assigned as the patrol supervisor and Wickert was assigned as the desk officer. It was further undisputed that around 0515 hours, both Respondent and Wickert were present in the 107 Precinct stationhouse. Wickert stepped away from the desk at some point, as did Respondent. At that time, the duty inspector, Deputy Inspector Peter Bartoszek, came to the stationhouse to conduct an inspection, only to find the desk unattended.

The main question raised in this case is whether Respondent, verbally or through her conduct, assumed the role of desk officer in Wickert's absence. Wickert testified that he asked his fellow sergeant to staff the desk in order to take a break of personal necessity or to get something to eat. Respondent denied that Wickert ever asked this, and maintained she was behind the desk only to track down information about matters that arose during patrol. She also asserted that the precinct's then-commanding officer, Deputy Inspector Paul Valerga, was biased against her, and essentially persuaded Bartoszek to shade the incident as more serious than it actually was.

DEPUTY INSPECTOR PETER BARTOSZEK testified that he arrived at the 107 Precinct stationhouse around 0500 hours to conduct an inspection. He found no one around when he tried to enter through the rear door. Specifically, there was no desk officer visible through the door window and no response when he knocked, even after several minutes. When Bartoszek entered through the front door, he encountered two members of the public, one of whom was bleeding from the head. They said that they had come from the hospital and "the detectives told them to come here" (Tr. 11-14, 21, 27).

Bartoszek testified that he observed Respondent sitting in a chair in a room "behind the desk," watching television. She stood up when she saw him. Bartoszek asked Respondent what

was going on and if she was the desk officer. According to Bartoszek, Respondent answered that she was assigned as the patrol supervisor, but was "doing a desk relief, that she was doing a relief for the desk sergeant." To Bartoszek, she was saying that she was the temporary desk officer, to allow the assigned desk officer to take a personal or meal break (Tr. 14-17, 26-27, 31-35).

Bartoszek then saw a male sergeant come from upstairs. He "basically inform[ed]" Bartoszek that "he had the desk." It might not have been in so many words, "but in essence I did in just using common sense I knew that he was the desk officer." The male sergeant stated that he had been relieved and was on either meal or a personal. Bartoszek verbally reprimanded both sergeants, telling them that "you can't leave a police precinct with no one there to greet people." He made a note in the command log to that effect. The note, made at 0530 hours, stated, "Sgt. Irons inattentive on desk watching T.V. No UMOS in desk area upon my entry. Sgt. instructed to be more attentive while on desk." Bartoszek noted at trial that because Respondent was the temporary desk officer at the time, the responsibility for the desk was hers. The male sergeant should have signed out in the command log as being away from the desk (Tr. 18-19, 23-31; Respt. Ex. A, command log entry).

Bartoszek indicated that Deputy Inspector Paul Valerga, the commanding officer of the 107 Precinct, contacted him after reviewing the command log entry. It was after this conversation that Bartoszek decided to issue a command discipline to Respondent. There was "[n]othing really specific that I recall" that made Bartoszek issue the CD "except that I guess the incident was pretty serious when you don't cover a precinct." "[T]here is no specific reason" Bartoszek did not issue the male sergeant a CD, other than "I guess that night he didn't sign off the desk so I didn't think a CD was necessary" (Tr. 22, 35-36).

SERGEANT MATTHEW WICKERT testified that he was assigned as the desk officer in the 107 Precinct on the first platoon on August 16, 2016. He stated that he was relieved for a meal

period at 0400 or 0415 hours by Respondent. According to Wickert, when Respondent arrived at the stationhouse, she said to him, "You may go to meal now," without any request being made by him. Wickert asserted that he was under the impression Respondent had come to the stationhouse specifically to relieve him, but admitted he was made aware of a robbery that took place that night. He went upstairs to the supervisors lounge for about one hour. Wickert admitted that he did not make a notation in the command log about leaving the desk (Tr. 38-40, 47-49, 52).

When Wickert returned, he observed Respondent interacting with the duty inspector behind the desk area. The inspector asked what his status and position were. Wickert answered that he was the desk officer returning from meal. The inspector instructed Wickert that he was required to always document his whereabouts (Tr. 40-41, 49).

Wickert testified that he received a command discipline, adjudicated by Valerga, as the result of his involvement in the incident. He stated that he accepted the CD because he was not supposed to have taken meal if there were only two supervisors, cf. Patrol Guide § 202-14, *Desk Officer*, ¶ 6, Note (when there is more than one patrol supervisor, one will relieve the desk officer for meal). He also should have made a command log entry, cf. PG § 202-14, ¶ 6 (desk officer to sign out when leaving desk for any reason) (Tr. 44-45, 51, 56).

Wickert conceded that a supervisor did not necessarily have to be the desk officer to make an entry in the command log. For example, a supervisor could make an entry regarding the transport of a prisoner (Tr. 44-47).

POLICE OFFICER THOMAS JOHNSON was assigned to the 107 Precinct as well. He testified that he had responded to a local hospital during the first platoon on August 16, 2016, in response to a rape case. While there, he found two complainants with regard to a separate robbery. Johnson and other officers took a complaint report for the robbery, but the detectives did not respond to the hospital. Around 0500 hours, Johnson called the desk at the 107 Precinct

to let the command know the victims were coming in. Respondent, who previously had been at the hospital and knew about the robbery, answered the phone. Johnson testified that the desk line normally was answered by the desk officer, but any supervisor was entitled to do so (Tr. 58-63).

LIEUTENANT MICHAEL HOEHL, the 107 Precinct's integrity control officer, conducted an investigation into the incident. This included conducting Respondent's official Department interview on September 16, 2016 (see Dept. Ex. 1, transcript). According to Hoehl, Respondent indicated that she was in the stationhouse and Wickert "had left" the desk area, but she did not know where he went or why, and he did not say anything about leaving. According to Respondent, she did not know if Wickert was on a break but she did not relieve him. Respondent stated in the interview that she was "just by the desk and not formally taking it over." Respondent "would dance around" the question of whether she was on the desk. In Hoehl's view, it was "difficult to see" how Wickert "on the desk just walked away" if Respondent had not been present and there had been no communication between them. Hoehl testified that there was "a lot of confusion" in the interview "trying to nail down exactly" what Respondent was doing in the stationhouse at that moment and where Wickert had gone (Tr. 66-69, 71-73).

In her **OFFICIAL DEPARTMENT INTERVIEW**, Respondent stated that she did not relieve Wickert. She said, "If he asked me" for relief, "I didn't know." Respondent agreed that Wickert was on the desk when she arrived at the stationhouse, but later was not. When asked if Wickert had asked her to cover the desk, Respondent answered, "Not that I remember. . . . I was too busy caught up" investigating the robbery and looking for a past complaint report, "so even if he did, I didn't hear him." She denied telling the duty inspector that she relieved Wickert. Instead, she told him that Wickert probably left to take a break or get something. Respondent conceded

during the interview that she observed Wickert walk away. She admitted that she realized he was gone for five to ten minutes (Ex. 1, pp. 4-5, 8-14, 17).

POLICE OFFICER THIERRY POCHAT was the operator for Respondent, the patrol supervisor, on August 16, 2016. He testified that he had to respond to the hospital with Respondent concerning a rape case. While there, he heard some other individuals make a comment along the lines of making a police report. It turned out that they were there after having been assaulted but the police never showed up (Tr. 86-88, 91-92, 94-95).

Pochat testified that he went with Respondent to the 107 Precinct stationhouse to find out some information about the assault, such as whether it came over 911, whether the police responded, and whether a complaint was filed. She did this from the computer at the desk. Some of the individuals from the assault were there as well. Pochat remembered that Respondent took a phone call from Johnson. He maintained, however, that he never saw Respondent "assume the post of desk officer" and did not recall her speaking to Wickert. Pochat did not recall whether Wickert was at the desk while Respondent was there (Tr. 86-87, 89-90, 95-96, 98-99).

RESPONDENT agreed that she was approached, while at the hospital, by an individual that said, "[I]t's about time." She found out that there had been an assault and robbery of three males. They called the police but no one showed up (Tr. 102-04).

Respondent testified that while she was at the hospital, Wickert called "one of the officers" and indicated that he needed a personal. Respondent texted Wickert that she could come back to the command around 0400 or 0500, but at that moment was involved in the matters at the hospital (Tr. 112).

Respondent returned to the 107 Precinct stationhouse and went to the computer "by the desk" to look for robbery or assault complaint reports from the previous tour. After about 10 to 15 minutes, she could not find any report, so she went upstairs to inform the precinct detective

squad that they needed to investigate the matter. Respondent also answered the phone call from Officer Johnson. She did not know where Wickert was at this point. She was standing at the computer, which, she alleged, was "next to" the desk and not where the desk officer usually stands. She then conceded that the computer was only about two feet away from that. Also around that time, the men from the assault case arrived at the stationhouse. Respondent welcomed them and told them that the detectives would speak with them soon (Tr. 104-06, 108, 113, 121-22, 132, 136-39).

Respondent testified that she did not have any conversation at the stationhouse, or "an understanding of any kind," about relieving Wickert and acting as desk officer. She denied that she assumed the "duties of a desk officer from" Wickert (Tr. 101-02, 112-13).

Around 0500 to 0515 hours, Respondent came back downstairs. Before resuming patrol, she stopped in the supervisors room "in the back" where she had some juice. An officer told her that they had not had meal and did not know where Wickert was. Also, an officer needed to sign out a prisoner to bring to central booking. Respondent signed out the prisoner in the command log (see Ex. A, margin comments, noting transport at 0515 hours). She first testified that she did so because Wickert was not at the desk, but then stated that she did not remember "if he was standing there or not." If Wickert was in the desk area, it was not by the command log. Respondent was about to leave when Bartoszek entered and found her in the supervisors room. Respondent noted at trial that while the television in the room was on, it always was on and she was not watching it. She denied sitting down in that room (Tr. 106-11, 126-29, 132-33, 137-38, 140).

Respondent conceded that at some point while she was on the desk, Wickert was not on the desk. She claimed not to have realized that he left. Once Respondent was in the supervisors room, she realized that Wickert was not on the desk, when Bartoszek asked where everybody was (Tr. 120-22, 128-31).

Respondent denied lying to or misleading investigators during her official Department interview. She asserted that her commanding officer, Valerga, might have prevailed upon Bartoszek to issue the CD because of a pending lawsuit Respondent has against Valerga. The allegations are that Valerga attempted to force Respondent to wrongfully downgrade crime reports, and then retaliated against her for refusing to go along with it (Tr. 113-16, 118-19).

The initial dispute for the Court to decide is whether Respondent was "acting as the desk officer," as alleged in the first two specifications. For example, in *Case Nos. 2009-1167 & 2010-2380* (July 20, 2013), the accused sergeant was assigned on the roll call as "desk officer," and a brand-new, in-training sergeant was listed as "orientation." The accused made handwritten changes making himself "assistant desk officer" and the new sergeant "desk officer." In practice, both members were taking actions consistent with the desk during the tour. But when a prisoner tried to hang himself in the holding cells, and an alleged cover-up ensued, the accused sergeant was charged as being assigned as the "desk officer." The tribunal noted that "if one is to avoid the exaltation of form over substance," one must look at the actual actions of the individuals involved, and not simply their titles. See 2009-1167 & 2010-2380, pp. 26-28; cf. *Case No. 74928/99* (Feb. 17, 2000) (where accused was charged with making statement to "desk officer," but actually spoke to both desk officer and assistant desk officer, while improperly asking for complaint report on his own arrest possibly in order to find out complainant's name, decision referred to both inquired-of officers as "the desk officers").

The Court finds that Respondent was acting as the desk officer during the time in question in this case. To do so did not require an explicit or formal agreement, as alleged by Wickert and denied by Respondent. Rather, it was undisputed that both Respondent and Wickert knew they were the sole supervisors assigned during the platoon. No one else could have acted as desk officer. Respondent admitted that she knew Wickert had asked her previously about relief. Therefore, the Court rejects Respondent's claim that Wickert did not ask her to relieve

him temporarily. To find otherwise would mean that Wickert simply walked away and said nothing, or he said something but Respondent failed to hear him in an area that was practically devoid of activity around five o'clock in the morning. Neither option is very credible.

Respondent also admitted that she was behind the desk, roughly in the same position the desk officer would normally stand or sit, notwithstanding her attempt at trial to distance herself literally and figuratively from that spot. She took several actions consistent with being the only supervisor at the desk, such as signing a prisoner out in the command log, and answering the desk phone. The fact that any supervisor has the authority to take these actions did not change the fact that Respondent was operating as the only supervisor behind the desk.

This conclusion is further clarified by the fact that Respondent was behind the desk for some time. She estimated that she was looking at the computer for 10 to 15 minutes. She claimed that during much of this time she did not know Wickert's whereabouts. To the tribunal, it appeared that Respondent was studiously attempting to avoid that knowledge. Wickert could have been right next to her, he could have been in outer space, but the important part was that she did not know his whereabouts and could not have known that she was acting as the desk officer. The Court does not find it credible that Respondent could have been at the desk for 10 to 15 minutes and not known that Wickert was either there or walked away.

Respondent's answers at her official Department interview further solidify the conclusion that her trial testimony was meant to obfuscate and was not credible. She allowed in her interview that if Wickert asked her to relieve him, she did not hear it. She admitted knowing that Wickert had left the desk, telling Bartoszek that Wickert probably left to take a break or get something. She specifically conceded that she observed Wickert walk away, and realized he was gone for five to ten minutes. In the Court's view, these answers are more credible than her trial testimony.

As such, the Court finds that Respondent was acting as the desk officer during the time that Wickert was away from the desk and she was behind it.

The tribunal also rejects the relevancy of any issues between Respondent and her former commanding officer, Valerga. While it is certainly possible that Valerga's conversation with Bartoszek persuaded the latter to write Respondent a command discipline, that has no bearing on the Court's review of the case. Most of the facts of the case happened outside Bartoszek's presence. It is undisputed that Respondent was not at the desk when he came upon the scene. Further, there is no evidence that his testimony or that of Wickert was influenced by Valerga, who, as noted, no longer is assigned to the 107 Precinct.

Specification No. 1 charges that Respondent wrongfully failed to remain alert and remain on post until relieved while acting as the desk officer. It is undisputed that Respondent walked away from the desk. Due to the amount of time that Respondent was at the desk, she must have known that Wickert was no longer present at the time she walked away. Her answer at trial that she essentially had no idea whether he was there or not was incredible and the Court rejects it. Therefore, Respondent is found Guilty of Specification No. 1.

Specification No. 2 charges that Respondent wrongfully failed to take certain actions that a desk officer is required to take under Patrol Guide § 202-14. The tribunal agrees that Respondent was obligated to sign in the command log when she assumed desk officer duties, and when leaving the desk, see §§ 202-14 (1),(6). Respondent could not have been responsible for all command operations if she was in the supervisors room getting a snack instead of at the desk, see § 202-14 (3).

Respondent could not, however, have visited every area of the stationhouse during the approximately 10 to 15 minutes she would have been acting as desk officer, see § 202-14 (5). This is quite an ironic charge, considering that there would have been no one to relieve *her*. And

§ 202-14 (14) relates to the Domain Awareness System. No mention of this was made at trial and the Court is unaware of why it is cited in the specification.

Finally, Respondent correctly argued (Tr. 146-47) that she affirmatively took a step that the specification alleges she failed to take, namely interviewing witnesses who had come to the stationhouse. The evidence demonstrated that the men Bartoszek saw were the same men Respondent already had interacted with at the hospital. She was aware of their complaint, and it was she who greeted them and told them to wait for the detectives. Respondent's officers, Johnson and Pochat, backed up her account, noting respectively that the complainants or witnesses left the hospital and arrived in the stationhouse.

As such, Respondent is found Guilty in Part of Specification No. 2.

Specification No. 3 charges that Respondent made inaccurate, incomplete, or otherwise misleading statements during her official Department interview regarding her actions on August 16, 2016. The Court agrees that some of Respondent's statements were inaccurate, incomplete or otherwise misleading. The foremost among these was Respondent's insistence that she did not hear Wickert make a relief request, if he made one at all. As noted supra, the Court does not find this credible. As such, Respondent is found Guilty.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 20, 2004. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department's recommendation of a penalty including dismissal probation (Tr. 155) is well taken. This is based first and foremost on the concept of progressive discipline. As noted infra, Respondent has a significant recent disciplinary history. Moreover, her most recent prior case raised similar issues to that raised in the instant matter: proper conduct when relieving the

desk officer. Furthermore, Respondent's equivocation at her official interview only compounded her misconduct.

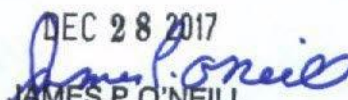
Accordingly, the tribunal recommends that Respondent be **DISMISSED** from the New York City Police Department, but that her dismissal be held in abeyance for a period of one year, pursuant to Administrative Code § 14-115 (d), during which time she is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that Respondent forfeit 20 vacation days. See Case No. 2013-10370 (Jan. 29, 2015) (officer received penalty of 40 days and one-year dismissal probation for relatively minor misconduct of failing to remain on post until properly relieved, making improper entries in Omega post log, facial hair, and failing to maintain activity log, but compounded by false and misleading statements during official Department interview and refusing to clarify and answer questions during interview).

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

DEC 28 2017

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT MICHELLE IRONS
TAX REGISTRY NO. 933865
DISCIPLINARY CASE NO. 2016-16285

Respondent was appointed to the Department on January 20, 2004. On her last three performance evaluations, she twice received 4.0 overall ratings of "Highly Competent" and once received a 3.0 overall rating of "Competent." [REDACTED]

Respondent has two prior disciplinary adjudications. In *Case No. 2010-1090* (Nov. 22, 2010), she pleaded Guilty to failing to promptly comply with a supervisor's order to report to the administrative office for re-assignment, and telling the supervisor, in sum and substance, "This is not my job, I do not care if you are a supervisor, I was eating, stop treating me like an animal, I am a grown woman," and telling someone on the phone, "Get me out of this place, I don't care who you have to call." The underlying facts took place in 2009. Respondent negotiated a penalty of 25 vacation days.

In *Case No. 2014-12558* (May 27, 2016), Respondent was found Guilty of telling a supervisor that she would not come in for her upcoming midnight tour if the supervisor did not give her lost time for her current tour, and absenting herself from police duties for four hours. She forfeited 25 vacation days for the misconduct in this case, which took place in 2014. It should be noted that this appears to be the matter Respondent testified about briefly at trial in the instant case. Respondent testified here that the supervisor "was on the desk and he put me in as the desk officer and I wasn't the desk officer. I got 25 days taken away from me for being the desk officer that I wasn't the desk officer" (Tr. 119). In fact, while the tribunal found in the prior case that Respondent was assigned as the desk officer while relieving the supervisor in question, she was found Not Guilty of the sole specification regarding that status, that she allegedly failed to log in summonses and complaint reports. Moreover, Respondent herself testified that she did in fact offer to relieve the supervisor, an offer he accepted (-12558, p. 5).

Respondent was placed on Level 2 Discipline Monitoring on November 7, 2016, in connection with the instant charges and specifications.


David S. Weisel
Assistant Deputy Commissioner Trials